TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted]140

JOE WYMAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED OCTOBER 21, 1924.

(30,314)

(29,214)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 664.

JOE WYMAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 20, 1922.

1 Sell.

Affidavit Supporting Information.

United States District Court, Eastern District of New York.

UNITED STATES OF AMERICA, Plaintiff,

against

JOE WYMAN, Defendant.

Information.

Violation of Section 3, Title II, Act of October 28, 1919.

EASTERN DISTRICT OF NEW YORK, *ss:*

James Bruno, being duly sworn, deposes and says that he is an agent of the Internal Revenue Department, duly appointed according to law.

That on or about the 19th day of May, 1922, at the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, the above named defendant, Joe Wyman did unlawfully, wilfully and knowingly sell, in a place other than a private dwelling, for beverage purposes, certain intoxicating liquor, to wit: Whiskey which contained more than one-half of one percentum of alcohol by volume, against the peace and dignity of the United States, and contrary to the form of the statutes of the United States in such case made and provided, and especially contrary to section 3, Title 2, Act of October 28, 1919.

Wherefore, deponent asks that an information be filed against said Joe Wyman, and that he may be dealt with according to
2 law.

JAMES BRUNO.

Sworn to before me this 20th day of June, 1922.

EDMUND D. HENNESSY,
United States Commissioner, Eastern District of New York.

3 *Information.*

UNITED STATES OF AMERICA,
Eastern District of New York:

In the District Court of the United States within and for the District Aforesaid.

At the June Term of said Court, in the year one thousand nine hundred and twenty-two, Ralph C. Greene, Attorney for the United

States, for the Eastern District of New York, who in this behalf prosecutes in the name of the United States, and for the United States comes here into said court on this 21st day of June, 1922, in his own proper person and for the United States gives the said court here to understand and be informed that Joe Wyman late of the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this court, on or about the 19th day of May, 1922, at the Borough of Brooklyn, as aforesaid, did unlawfully, wilfully and knowingly sell in a place other than a private dwelling, for beverage purposes, certain intoxicating liquor, to wit: Whiskey, containing more than one-half of one percentum of alcohol by volume, against the peace and dignity of the statutes of the United States in such case made and provided, and especially contrary to Section 3, Title 2, Act of October 28, 1919.

Wherefore, said attorney in behalf of the United States prays the consideration of the court here in the premises, and that due process of law may be awarded against the said Joe Wyman in this behalf to make answer to the United States touching and concerning the premises aforesaid.

4 RALPH C. GREENE,
The United States Attorney for the
Eastern District of New York.

5 *Endorsements on Information.*

United States District Court, Eastern District of New York.

8492.

UNITED STATES OF AMERICA, Plaintiff,

against

JOE WYMAN, Defendant.

Criminal Information.

Violation of Section 3, Title II, Act of October 28, 1919.

Let the within information be filed.
Dated, June 21, 1922.

THOMAS I. CHATFIELD,
U. S. D. J.

RALPH C. GREENE,
U. S. Attorney for the
Eastern District of New York.

June 23, 1922.—Before Chatfield, J., defendant arraigned. Plea not guilty. Bail fixed at $500, ordered to return July 5, 1922.

July 5, 1922.—Before Garvin, J., defendant present, case marked ready.

July 24, 1922.—Before Cooper, J., defendant present ordered to return July 25, 1922, 10 a. m.

6 July 25, 1922.—Before Cooper J., defendant present. Tried. Verdict guilty. Sentence postponed until July 27, 1922, at 2 p. m. Defendant ordered to return on his bond.

July 27, 1922.—Before Cooper, J., defendant present. Sentenced to be imprisoned for 45 days in Essex County Jail, Newark, New Jersey. On application of defendant's attorney execution of sentence stayed pending appeal to Supreme Court of the United States. Bail fixed at $2,000.

July 27, 1922.—Order filed and entered allowing writ of error. July Term 1922 extended 60 days from this date. Bill of exceptions, petition, assignment of errors filed. Writ of error issued. Writ of error and citation filed. Recognizance filed.

7 *Transcript of Docket.*

Docket 8492.

UNITED STATES

vs.

JOE WYMAN.

Proceedings.

June 21, 1922. Information filed.
" 23, 1922. Before Chatfield, J., defendant arraigned, plea not guilty, bail fixed at $500, and ordered to return July 5th, 1922.
" 26, 1922. Recognizance filed.
July 5th, 1922. Before Garvin, J., defendant present, case marked ready.
" 24, 1922. Before Cooper J., defendant present, and ordered to return July 25, 1922.
" 25, 1922. Before Cooper, J., defendant present, tried verdict guilty. Sentence postponed until July 27, 1922, at 2 p. m. Defendant ordered to return on his bond.
" 27, 1922. Before Cooper, J., defendant present. Sentenced to be imprisoned for 45 days in Essex County Jail, Newark, New Jersey. On application of defendant's attorney execution of sentence stayed pending appeal to Supreme Court of the United States. Bail fixed at $2,000.
" 27, 1922. By Cooper, J., order filed and entered allowing writ of error, etc. July Term 1922 extended 60 days from this date.
" 27, 1922. Bill of exceptions, petition and assignment of errors filed. Writ of error issued.
" 27, 1922. Writ of error and citation filed. Recognizance filed.

8 *Citation.*

By the Hon. Frank Cooper, one of the Judges of the United States District Court for the Northern District of New York, sitting in the United States District Court for the Eastern District of New York, in the Second Circuit, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, in the City of Washington, in the District of Columbia, thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the United States District Court for the Eastern District of New York, wherein Joe Wyman is plaintiff-in-error, and you are defendant-in-error, to show cause, if any there, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand and seal, at the Borough of Brooklyn, City of New York, in the District and Circuit aforesaid, this 27th day of July, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States, the one hundred and forty-seventh.

FRANK COOPER,
United States District Judge.

9 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the District Court of the United States for the Eastern District of New York, Greeting:

Because in the record and proceedings as also in the rendition of judgment of a plea which is in said District Court before you, or some of you, between the United States of America, plaintiff, and Joe Wyman, defendant, wherein was involved the construction and application of the Constitution of the United States, a manifest error hath happened to the great damage of said defendant, Joe Wyman, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 26th day of August, next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to

the laws and customs of the United States should be done.
10 Witness, the Honorable William Howard Taft, Chief Justice of the said Supreme Court, the 27th day of July, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States the one hundred and forty-seventh.

PERCY G. B. GILKES,
Clerk of the United States District Court, Eastern District of New York,
By J. G. COCHRAN,
Deputy Clerk.

The foregoing writ is hereby allowed.

FRANK COOPER,
[SEAL.] *United States District Judge.*

11 *Order Allowing Writ of Error, etc.*

United States District Court for the Eastern District of New York.

UNITED STATES OF AMERICA, Plaintiff,

against

JOE WYMAN, Defendant.

Upon the annexed petition and the record and all proceedings in this cause, it is

Ordered that a writ of error returnable in the Supreme Court of the United States, and a citation directed to the United States of America, be issued as prayed for; and it is further

Ordered that defendant, Joe Wyman, may, at any time during the pendency of the cause in the Supreme Court of the United States, be enlarged upon bail, upon executing an undertaking with good and sufficient sureties, in the sum of $2,000.00 for his appearance to answer any order, judgment or decree, either of the Supreme Court of the United States, or of the United States District Court for the Eastern District of New York; and it is further

Ordered that the present term of this court be extended sixty days from the date hereof, for all purposes of the action.

Dated, July 27th, 1922.

FRANK COOPER,
United States District Judge.

12 *Petition for Writ of Error.*

United States District Court for the Eastern District of New York.

UNITED STATES OF AMERICA, Plaintiff,

against

JOE WYMAN, Defendant.

Joe Wyman, the above named defendant, conceiving himself aggrieved by the judgment of conviction of a violation of the act of Congress passed the 28th day of October, 1919, commonly known as the Volstead Act, said cause involving the construction and application of the Constitution of the United States, prays for a writ of error to the Supreme Court of the United States, and for a citation directed to the United States of America, and for an order admitting him to bail until the cause can be heard and determined in the Supreme Court of the United States, and for such other and further relief as may be just.

Dated, July 27th, 1922.

ROBERT H. ELDER,
Attorney for Defendant.

Seven Dey Street, Borough of Manhattan, City of New York.

13 *Bill of Exceptions.*

United States District Court for the Eastern District of New York.

UNITED STATES OF AMERICA, Plaintiff,

against

JOE WYMAN, Defendant.

Bill of Exceptions.

Be it remembered, that on the trial of this cause in this court, at a term thereof, on the 25th and 27th days of July, 1922, the Honorable Frank Cooper, District Judge, presiding, when the following proceedings were had, to wit:

A jury was empanelled and sworn.

Thereupon defendant moved to dismiss the information and for his discharge and that no further proceedings be had upon the ground that the crime charged in said information is an infamous crime within the meaning of the fifth amendment to the Constitution of the United States in that it is a crime upon due conviction of which the court, by reason of the statutes of the United States and the States of New York and New Jersey, and the rules, regulations, contracts and arrangements made thereunder, has power to impose

an infamous punishment, namely, imprisonment at hard labor and imprisonment with involuntary labor, by reason whereof defendant could not be held to answer for such crime in this court unless on a presentment or indictment of a grand jury. The court in all respects denied the motion, and defendant then and there duly excepted.

14 Thereupon the government opened its case and offered the testimony of witnesses; defendant opened his case and offered the testimony of witnesses; the government offered testimony in rebuttal; both sides summed up to the jury; the court charged the jury; the jury retired and later returned rendering a verdict of guilty as charged.

Thereupon the court pronounced judgment sentencing defendant to imprisonment for a term of forty-five days in the Essex County Jail, Newark, New Jersey.

And now, in furtherance of justice and that right may be done defendant, Joe Wyman, tenders and presents the foregoing as his bill of exceptions, and prays that same may be settled and allowed and signed and sealed by the court and made a part of the record, which is accordingly done the 27th day of July, 1922.

FRANK COOPER,
District Judge.

Approved as to form.
RALPH C. GREENE,
United States Attorney,
Eastern District of New York.

15 *Assignments of Error.*

United States District Court for the Eastern District of New York.

UNITED STATES OF AMERICA, Plaintiff,

against

JOE WYMAN, Defendant.

Joe Wyman, the above named defendant, makes and files this his assignment of errors:

1. The United States District Court for the Eastern District of New York, erred in denying defendant's motion made at the opening of the case to quash the information and discharge defendant upon the ground that the crime charged in said information is an infamous crime within the meaning of the fifth amendment to the Constitution of the United States.

2. The United States District Court for the Eastern District of New York erred in denying defendant's motion made at the opening of the case to quash the information and discharge defendant upon the ground that the crime charged in said information is one which cannot be prosecuted by information.

3. The United States District Court for the Eastern District of New York erred in denying defendant's motion made at the opening of the case to quash the information and discharge defendant upon the ground that the crime charged in said information is one which cannot be prosecuted in the United States District Court for
16 the Eastern District of New York, upon an information.

4. The United States District Court for the Eastern District of New York erred in proceeding, over defendant's objection and exception, with the trial of said accusation, without indictment or presentment by a grand jury.

Dated, July 27th, 1922.

ROBERT H. ELDER,
Attorney for Defendant.

Seven Dey Street, Borough of Manhattan, City of New York.

17 It is stipulated that the foregoing consists of a true transcript of the record as agreed upon by the parties.

ROBERT H. ELDER,
Attorney for Defendant.
RALPH C. GREENE,
United States Attorney for the Eastern District of New York.

18 & 19 I, Percy G. B. Gilkes, Clerk of the United States District Court for the Eastern District of New York, do certify that the foregoing consists of a true transcript of the record, as agreed upon by the parties.

In witness whereof, I have hereunto set my hand and affixed the seal of said court the 21 day of August, 1922.

[Seal of District Court of the United States, Eastern District of New York.]

PERCY G. B. GILKES,
Clerk,
By JOHN A. LEAVENS,
Deputy Clerk.

20 [Endorsed:] File No. 8492. Year ——. United States District Court for the Eastern District of New York. United States of America, Plaintiff, against Joe Wyman, Defendant. Return to Writ of Error. Robert H. Elder, Attorney for Defendant, 7 Dey St., Borough of Manhattan, New York City.

21 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the District Court of the United States for the Eastern District of New York, Greeting:

Because in the record and proceedings as also in the rendition of judgment of a plea which is in said District Court before you, or some of you, between the United States of America, plaintiff, and Joe Wyman, defendant, wherein was involved the construction and application of the Constitution of the United States, a manifest error hath happened to the great damage of said defendant, Joe Wyman, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 26th day of August, next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief
22 & 23 Justice of the said Supreme Court, the 27th day of July, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States the one hundred and forty-seventh.

[Seal of District Court of the United States, Eastern District of New York.]

PERCY B. G. GILKES,
Clerk of the United States District Court,
Eastern District of New York,
By J. G. COCHRAN,
Deputy Clerk.

The foregoing writ is hereby allowed.

FRANK COOPER,
United States District Judge.

24 [Endorsed:] File No. 8492. Year ——. Supreme Court. Joe Wyman, Plaintiff-in-error, against United States of America, Defendant-in-error. Writ of Error. Robert H. Elder, Attorney for Plaintiff-in-error, 7 Dey St., Borough of Manhattan, New York City. Pd. $1.10. Filed in clerk's office U. S. District Court, E. D. N. Y., July 27, 1922, at — M. o'clock.

25 & 26 By the Hon. Frank Cooper, one of the Judges of the United States District Court for the Northern District of New York, sitting in the United States District Court for the Eastern District of New York, in the Second Circuit, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, in the City of Washington, in the District of Columbia, thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the United States District Court for the Eastern District of New York, wherein Joe Wyman is plaintiff-in-error, and you are defendant-in-error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand and seal at the Borough of Brooklyn, City of New York, in the District and Circuit aforesaid, this 27th day of July, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States, the one hundred and forty-seventh.

FRANK COOPER,
United States District Judge.

27 [Endorsed:] File No. 8492. Year ——. Supreme Court. Joe Wyman, Plaintiff-in-error, against United States of America, Defendant-in-error. Citation. Robert H. Elder, Attorney for Plaintiff-in-error, 7 Dey St., Borough of Manhattan, New York City. Service of copy admitted July 27, 1922. Ralph C. Greene, U. S. Attorney, Eastern Dist. of N. Y. Pd. 10c. Filed in clerk's office U. S. District Court, E. D. N. Y., July 27, 1922, at — M. o'clock.

Endorsed on cover: File No. 29,214. E. New York D. C. U. S. Term No. 664. Joe Wyman, plaintiff in error, vs. The United States of America. Filed October 27th, 1922. File No. 29,214.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

JOE WYMAN, PLAINTIFF IN ERROR,
v.
THE UNITED STATES OF AMERICA. } No. 140.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

Comes now the Solicitor General and moves the court to advance the above-entitled case for hearing with No. 45, entitled *John H. Brede, Appellant,* vs. *James M. Powers, United States Marshal for the Eastern District of New York.*

The Wyman case bears docket No. 140 and originated in the District Court of the United States for the Eastern District of New York. Defendant therein was originally proceeded against by information for a violation of the National Prohibition Act, tried, found guilty, and sentenced to be imprisoned for 45 days in the Essex County Jail at Newark, N. J. The case is before this court on a writ of error from the above-mentioned District Court.

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Defendant Wyman challenges the jurisdiction of the District Court to take cognizance of the case upon an information, contending that he was in danger of having imposed upon him a sentence at "hard labor," an infamous punishment, and therefore under the fifth amendment to the Constitution the offense should have been presented to the court by a presentment or indictment of a grand jury.

Case No. 45, *Brede* v. *Powers*, involves the same question as that set forth in the Wyman case and originated in the same jurisdiction.

Defendants in both of the above cases are represented by the same counsel. It has been stipulated by counsel for defendants and the Attorney General that, if this motion be granted by this court, *Wyman* v. *United States* may be argued with the *Brede case* without filing additional briefs and as one case.

Counsel therefore suggest that the *Wyman case*, No. 140, be advanced and consolidated with the *Brede case*, No. 45.

JAMES M. BECK, *Solicitor General.*
MABEL WALKER WILLEBRANDT,
Assistant Attorney General.

Sept. 1923.

○

WYMAN *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

No. 140. Argued October 4, 1923.—Decided October 22, 1923.

Decided upon the authority of *Brede* v. *Powers*, *ante*, 4. Affirmed.

ERROR to the District Court for the Eastern District of New York, to review a judgment sentencing the plaintiff in error to imprisonment for 45 days in the Essex County Jail, Newark, New Jersey, for the offense of selling whisky for "beverage purposes," in violation of § 3, Title II, of the National Prohibition Act, 41 Stat. 305, 308. The prosecution was by information.

Mr. Otho S. Bowling, with whom *Mr. Robert H. Elder* was on the briefs, for plaintiff in error.

Mr. Solicitor General Beck and *Mrs. Mabel Walker Willebrandt*, Assistant Attorney General, appeared for the United States.

MR. JUSTICE MCKENNA delivered the opinion of the Court.

Plaintiff in error was proceeded against by an information for the violation of a section of the National Prohibition Act.

A motion was made to dismiss the information on the ground that the crime charged was an infamous one within the meaning of the Fifth Amendment to the Constitution of the United States, in that by reason of the statutes of the United States and those of New York and New Jersey, the court had power to impose an infamous punishment, namely imprisonment at hard labor and

imprisonment at involuntary labor, and that, therefore, Wyman could not be held to answer for such crime except upon presentment or indictment by a grand jury.

The motion was denied and after trial plaintiff in error was found guilty and sentenced to imprisonment for a term of 45 days in the Essex County jail, Newark, New Jersey.

To review this conviction and sentence is the purpose of this writ of error.

It will be observed that the case is identical in its legal aspects with *Brede* v. *Powers*, just decided, *ante*, 4. For the reasons stated in the opinion in that case, the proceedings, action and judgment are

Affirmed.

MR. JUSTICE MCREYNOLDS and MR. JUSTICE BRANDEIS concur in the result.
